



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

**FEB 25 2014**

OFFICE OF  
ENFORCEMENT AND  
COMPLIANCE ASSURANCE

VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

Mr. Michael Roberts  
Senior Vice President and General Counsel  
Crowley Maritime Corporation  
9487 Regency Square Blvd.  
Jacksonville, FL 32225

Dear Mr. Roberts:

**Subpoena *Duces Tecum* under Sections 8(b) and 8(f)(3) of the Act to Prevent Pollution from Ships,  
33 U.S.C. §§ 1907(b) and 1907(f)(3)**

The United States Environmental Protection Agency (EPA) hereby requires Crowley Maritime Corporation (Crowley or "you") to submit certain information as part of an EPA investigation to determine Crowley's compliance with Annex VI of the MARPOL Treaty (Annex VI) and the Act to Prevent Pollution from Ships (APPS), 33 U.S.C. §§ 1901-1915 (2008). Annex VI requires ships operating within an Emissions Control Area (ECA) to use fuel with a sulfur content not exceeding 1.00%.

The EPA is issuing this subpoena under sections 8(b) and 8(f)(3) of the APPS, 33 U.S.C. §§ 1907(b) and 1907(f)(3). Pursuant to section 8(f)(3), the EPA has the authority to enforce regulations 17 and 18 of Annex VI for cases involving shoreside violations, and for any other matters that have been referred to the EPA by the U.S. Coast Guard. Pursuant to section 8(f)(3), the EPA has "all of the authorities of the [U.S. Coast Guard], as specified in [section 8(b)], for the purposes of enforcing" these regulations. 33 U.S.C. § 1907(f)(3). Section 8(b) requires the U.S. Coast Guard to investigate potential violations of the regulations "upon receipt of evidence that a violation has occurred..." and provides the U.S. Coast Guard, and the EPA in matters referred to it by the U.S. Coast Guard, with the authority to issue subpoenas to require the attendance of any witness, and the production of documents and other evidence, in furtherance of such an investigation. 33 U.S.C. § 1907(b). The U.S. Coast Guard has referred all violations related to fuel oil non availability reports to the EPA, and thus the EPA is authorized to issue this subpoena for documents and information in this case. Exhibit A specifies the information that you must submit. Exhibit B provides instructions for your response to this request.

Under 40 C.F.R. Part 2, Subpart B, you may assert a claim of business confidentiality for any portion of the submitted information. You must specify the page, paragraph, and sentence when identifying the

information subject to your claim. Exhibit D specifies the assertion and substantiation requirements for business confidentiality claims.

Failure to provide the required information may result in the initiation of a civil action pursuant to section 8(b) of the APPS, 33 U.S.C. § 1907(b). Failure to provide all requested information in its entirety, and in the format requested, may result in additional inquiries and civil penalties. It is important that your responses be clear, accurate, and complete. The EPA will regard submitted information that is misleading, false, incomplete, or submitted without regard to its accuracy as a violation of the APPS and/or criminal statutes. The EPA may use any information submitted in response to this request in an administrative, civil or criminal action.

Crowley must submit all requested information under an authorized signature with the following certification:

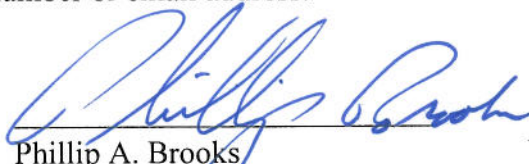
I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, pursuant to Section 8(b) of the APPS, 33 U.S.C. § 1907(b) and 18 U.S.C § 1001.

Please submit all requested information, via courier service or overnight delivery or email, to:

Matt Haber, Senior Advisor (Air-1)  
Air Enforcement Division  
U.S. Environmental Protection Agency  
75 Hawthorne Street  
San Francisco, CA 94105  
[haber.matt@epa.gov](mailto:haber.matt@epa.gov)

You must submit your responses within 30 calendar days from the date of this subpoena. If you anticipate being unable to fully respond to this subpoena by this date, you must contact Matt Haber at +1 (415) 947-4154 or [haber.matt@epa.gov](mailto:haber.matt@epa.gov) within 15 calendar days of the date of this subpoena and, with an appropriate justification, request in writing an extension of time to respond to the information requests below. If timely submitted, the EPA will review your request and may extend the time in which all or part of your response must be provided. Any questions regarding this subpoena should also be directed to Matt Haber at the above phone number or email address.

2/25/2014  
Date

  
Phillip A. Brooks  
Director, Air Enforcement Division

Enclosures: Exhibits A-D

cc: Ministry of Communications and Works  
Department of Merchant Shipping, Cyprus  
Antigua and Barbuda Department of Marine Services and Merchant Shipping  
LCDR Charles Fluke, U.S. Coast Guard  
Paul Topping, Transport Canada



## EXHIBIT A

### Subpoena Duces Tecum

1. Provide copies of all Crowley corporate policies and procedures containing Crowley's environmental protection policies related to compliance with Annex VI of the MARPOL Treaty, as they relate to the North American Emissions Control Area (ECA). Include all revisions to such policies, and the date such original documents and revisions were distributed to relevant staff, including crews of Crowley's vessels. Include and highlight relevant sections that enable Crowley and vessel crew to implement effectively the environmental protection policy and procedures for compliance with or pertaining to MARPOL Annex VI.
2. Provide relevant excerpts from the Safety Management System for each vessel listed in Appendix C. Identify all provisions related to compliance with requirements in any ECA.
3. Provide a copy of the International Air Pollution Prevention (IAPP) Certificate and all supplements to IAPP certificates issued by the Flag Administration for each vessel listed in Appendix C for the time period in question.
4. For each filed Fuel Oil Non Availability Report (FONAR), as listed in Exhibit C :
  - a. List each bunker supplier that does business at the port of call the vessel visited prior to the vessel entering the North American ECA, as well as each port the vessel visited since receiving orders to proceed to a destination in the North American ECA ( U.S. or Canada);
  - b. Provide copies of all correspondence with each bunker supplier you listed in response to a. above, beginning with the date that the vessel received orders to proceed to a destination in the North American ECA (U.S. or Canada);
  - c. If the fuel purchase was a contractual function of another party, provide copies of all contracts covering the period as stated above; and
  - d. Submit a copy of any long term fuel supply contracts for any of the ports covered by question 1-c above. A long term fuel supply contract is one that covers fuel supply at more than one port visit.
5. Submit a copy of Crowley's fuel procurement policies and contracts as they relate to any vessel for which Crowley filed a FONAR.
6. Provide an electronic spreadsheet with the following information for each FONAR that Crowley filed. Make sure to provide any missing information required by EPA's FONAR guidance,<sup>1</sup> but previously not submitted.
  - a. Report Date;
  - b. Report Form ID;

---

<sup>1</sup> <http://www2.epa.gov/sites/production/files/documents/finalfuelavailabilityguidance-0626.pdf>

- c. Ship Operator Name;
  - d. Vessel Name;
  - e. Flag Country;
  - f. IMO ID Number;
  - g. Date of ECA First Notice;
  - h. Location of ECA First Notice;
  - i. Name of Ports after First Notice;
  - j. Name of Last Port before ECA Entry;
  - k. Name of Port with Fuel Oil Supply Disruption;
  - l. Narrative Explaining the Reason for Noncompliance;
  - m. Name of Fuel Suppliers Contacted;
  - n. Date of Entry in the ECA;
  - o. Time of Entry in the ECA;
  - p. Sulfur Content of Non-Compliant Fuel Oil;
  - q. Projected Hours on Main Propulsion;
  - r. Name of First Port of Call (POC);
  - s. Compliant Fuel Oil Available at First POC;
  - t. Plan to Bunker Compliant Fuel Oil at First POC;
  - u. Name of Fuel Suppliers Contacted at First POC (N/A is not an acceptable answer);
  - v. Name of Second POC;
  - w. Compliant Fuel Oil at Second POC;
  - x. Plan to Bunker Compliant Fuel Oil at Second POC;
  - y. Name of Fuel Suppliers Contacted at the Second POC;
  - z. Date of Exit from ECA;
  - aa. Time of Exit from ECA;
  - bb. Has this vessel operated in the ECA in the previous 12 months;
  - cc. Number of Separate Visits to the ECA;
  - dd. Number of Ports visited in the ECA;
  - ee. Previously submitted FONARs;
  - ff. Number of Previously submitted FONARs;
  - gg. Designated Corporate Official Name;
  - hh. Designated Corporate Official E-mail;
  - ii. Designated Corporate Official Phone Number; and
  - jj. Description of Actions to Achieve Compliance (Narrative is acceptable).
7. For each voyage where non-compliant fuel was burned in the North American ECA, document the distance traveled in the U.S. portion of the North American ECA without compliant fuel and document the amount of fuel burned. For each of the above (distance and tons of fuel burned), document the methodology used and provide calculations performed.
8. For each FONAR submitted where compliant fuel was claimed to be off-spec and not used within the ECA, provide the following information:
- a. Bunker Delivery Note for the fuel oil;
  - b. Fuel oil supplier contact information;

- c. Lab analysis of fuel oil sample and contact information for the independent laboratory;
  - d. Narrative of how the off-spec characteristic(s) would have adversely affected emissions, safety, and/or proper operation of the vessel; and
  - e. Any remediation by the fuel oil supplier (e.g., debunkering of fuel oil) including, but not limited to, cost correction or credit. Include documents that memorialize any such remediation.
9. On December 10, 2013, Crowley submitted a FONAR for the Delphinus “because the combined aluminum and silica content [of fuel taken on board] exceeds specification...” On December 17, 2013, Crowley submitted an updated FONAR stating that a retest showed that the fuel was within its specification. Did Crowley use non-compliant fuel on the Delphinus during this voyage while within the North American ECA? The test report shows that the fuel was taken on board the Delphinus on April 12, 2013, submitted for testing on June 12, 2013, while the operation within the ECA would have been approximately December 17, 2013. Provide a narrative explanation for the reasons for the delay in fuel testing.
10. For each vessel in Crowley’s fleet, list the dates of each entry into the North American ECA beginning August 1, 2012. Include a copy of the logbook prescribed by the Administration for recording Annex VI fuel change-over. Separately, identify and list the date of entry of any of these vessels that came into North American ECA beginning August 1, 2012, and that used fuel with more than 1.00% sulfur and that did not file a FONAR. Include in this listing any vessel that transited the U.S. portion of the North American ECA (within 200 nautical miles of U.S. coast) but did not arrive at a U.S. port.



## EXHIBIT B

### Instructions for Responses

1. Provide narrative responses to requests numbered 1 through 10 above in English, in written document form, and in electronic form using spreadsheet or word processing software (e.g., using Microsoft Word or Excel or equivalent software), or in PDF format.
2. For each answer and document produced, label each response with the number and letter of the request to which it pertains.
3. Where documents or information necessary for a response are not in your possession, custody or control, indicate in your response why such documents or information are not available or in your possession, custody or control, and identify any source that either possesses or is likely to possess such information.
4. All submitted documents should be copies and not original documents. Submit electronically scanned copies of documents as well as hard copies. Stamp each document with sequential identification numbers.
5. For each answer and document produced, identify each person who provided information that was used to prepare that answer.
6. Where Crowley has previously submitted to the EPA information requested herein, re-submit the information in the format requested. Identify the material that was previously provided, the date on which it was provided, and the person at the EPA to whom it was provided.
7. Under section 8(b) of the APPS, 33 U.S.C. § 1907(b), you are required to provide full and complete answers to each of the specific information requests set forth in the subpoena, and to indicate which documents are responsive to each information request. If a particular information request is inapplicable, you must state this in your response and provide a narrative explanation as to why you believe the information request does not apply. If you do not have documents responsive to any specific subpoena request, you must so indicate in your response.
8. You must submit all requested information under an authorized signature with the following certification:

I certify under penalty of law that I have examined and am familiar with the information in the enclosed documents, including all attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are, to the best of my knowledge and belief, true and complete. I am aware that there are significant penalties for knowingly submitting false statements and information, pursuant to Section 8 of the APPS, 33 U.S.C. § 1907(b) and 18 U.S.C. § 1001.

## EXHIBIT C

### List of Crowley Vessels and Original North American ECA FONAR Submission Date

Vessel	Date original NA ECA FONAR submission (dates follow the month/day/year convention)
K Breeze	
	10/23/2012
	10/30/2012
	11/6/2012
	11/16/2012
	11/21/2012
	11/27/2012
	12/6/2012
Delphinus	
	11/2/2012
	11/5/2012
	11/11/2012
	12/10/2013
Weisshorn	
	10/28/2012
	11/9/2012
	10/4/2012
	10/7/2012
Marcajama	
	10/30/2012
	11/13/2012
Pegasus J	
	12/13/2012
	12/25/2012
Stadt Hannover	
	10/29/2012
	10/31/2012



## EXHIBIT D

### **Confidential Business Information (CBI) Requirements**

#### **Assertion Requirements**

You may assert a business confidentiality claim covering all or part of the information requested in the attached letter, as provided in 40 C.F.R. § 2.203(b). To make a confidentiality claim, submit the requested information and indicate that you are making a claim of confidentiality. Any document over which you make a claim of confidentiality should be marked by attaching a cover sheet stamped or typed with a legend to indicate the intent to claim confidentiality. The stamped or typed legend, or other suitable form of notice, should employ language such as "trade secret" or "proprietary" or "company confidential" and indicate a date if any when the information should no longer be treated as confidential. Information covered by such a claim will be disclosed by the U.S. Environmental Protection Agency (EPA) only to the extent permitted and by means of the procedures set forth by 40 C.F.R. Part 2. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified. EPA will construe the failure to furnish a confidentiality claim with your response to the attached letter as a waiver of that claim, and the information may be made available to the public without further notice to you.

Please segregate personnel, medical and similar files from your responses and include that information on separate sheet(s) marked as "Personal Privacy Information" given that disclosure of such information to the general public may constitute an invasion of privacy.

#### **Substantiation Requirements**

All confidentiality claims are subject to EPA verification and must be made in accordance with 40 C.F.R. § 2.208 which provides in part that you satisfactorily show that you have taken reasonable measures to protect the confidentiality of the information and that you intend to continue to do so; and that the information is not and has not been reasonably obtainable by legitimate means without your consent.

Pursuant to 40 C.F.R. Part 2, Subpart B, EPA may at any time send you a letter asking you to substantiate fully your CBI claim. If you receive such a letter, you must provide EPA with a response within the number of days set forth in the EPA request letter. Failure to submit your comments within that time will be regarded as a waiver of your confidentiality claim or claims, and EPA may release the information. If you receive such a letter, EPA will ask you to specify which portions of the information you consider confidential. You must be specific by page, paragraph, and sentence when identifying the information subject to your claim. Any information not specifically identified as subject to a confidentiality claim may be disclosed to the requestor without further notice to you. For each item or class of information that you identify as being subject to CBI, you must answer the following questions, giving as much detail as possible:

1. For what period of time do you request that the information be maintained as confidential, e.g., until a certain date, until the occurrence of a specified event, or permanently? If the occurrence of a specific event will eliminate the need for confidentiality, please specify that event.
2. Information submitted to EPA becomes stale over time. Why should the information you claim as confidential be protected for the time period specified in your answer to question #1?
3. What measures have you taken to protect the information claimed as confidential? Have you disclosed the information to anyone other than a governmental body or someone who is bound by an agreement not to disclose the information further? If so, why should the information still be considered confidential?
4. Is the information contained in any publicly available material such as the Internet, publicly available databases, promotional publications, annual reports, or articles? Is there any means by which a member of the public could obtain access to the information? Is the information of a kind that you would customarily not release to the public?
5. Has any governmental body made a determination as to the confidentiality of the information? If so, please attach a copy of the determination.
6. For each category of information claimed as confidential, explain with specificity why release of the information is likely to cause substantial harm to your competitive position. Explain the specific nature of those harmful effects, why they should be viewed as substantial, and the causal relationship between disclosure and such harmful effects. How could your competitors make use of this information to your detriment?
7. Any other issue you deem relevant.

If you receive a request for a substantiation letter from the EPA, you bear the burden of substantiating your confidentiality claim. Conclusory allegations will be given little or no weight in the determination. In substantiating your CBI claim(s), you must bracket all text so claimed and mark it "CBI". Information so designated will be disclosed by EPA only to the extent allowed by, and by means of the procedures set forth in, 40 C.F.R. Part 2, Subpart B. If you fail to claim the information as confidential, it may be made available to the public without further notice to you.



## EXHIBIT E

### Definitions

All terms used in the Subpoena *Duces Tecum* have their ordinary meaning unless otherwise defined herein, in MARPOL Annex VI, the APPS, 33 U.S.C. §§ 1901-1915, or the regulations promulgated thereunder.

1. “International Air Pollution Prevention Certificate” refers to a certificate certifying compliance with the provisions of regulation 5 of MARPOL Annex VI as defined in Annex VI, Chapter 2, Regulation 6.
2. “Supplements” refers to Supplements to the International Air Pollution Prevention Certificate; the updated version of the Supplemental form was approved by the International Maritime Organization’s Marine Environment Protection Committee (MEPC) Resolution MEPC.194(61).
3. “Emissions Control Area” or “ECA” refers to “an area where the adoption of special mandatory measures for emissions from ships is required to prevent, reduce and control air pollution from NO<sub>x</sub> or SO<sub>x</sub> and particulate matter or all three types of emissions and their attendant adverse impacts on human health and the environment.” Annex VI, Chapter 1, Regulation 2.8.
4. “North American ECA” or “NA ECA” refers to the area off the coasts of the United States and Canada. The specific geographic coordinates that comprise the North American ECA are listed in the Resolution MEPC.190(60).
5. “Soundings” refers to the determination of the volume of fuel or fuel oil in a vessel’s fuel tanks.
6. “Flag Administration” refers to the legal jurisdiction of a merchant vessel.



**CERTIFICATE OF MAILING**

I, Tawanna Cathey, certify that I sent a subpoena pursuant to the Act to Prevent Pollution from Ships by Certified Mail, Return Receipt Requested, to:

Mr. Michael Roberts  
Senior Vice President and General Counsel  
Crowley Maritime Corporation  
9487 Regency Square Blvd.  
Jacksonville, FL 32225

25 Feb 2014

Date

for Caro Poo

Tawanna Cathey  
Air Enforcement Division  
Office of Civil Enforcement

Certified Mail Receipt Number: 7012 0470 0000 2063 7810